IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 9319 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE K.A.PUJ

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1	Whether Reporters of Local Papers may be allowed to see the judgment ?
2	To be referred to the Reporter or not ?
3	Whether their Lordships wish to see the fair copy of the judgment ?
4	Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?
5	Whether it is to be circulated to the civil judge ?

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HARESHBHAI ISHWARBHAI PATEL - Petitioner(s)
Versus
ALKABEN HARESHKUMAR PATEL D/O. JAYANTILAL SOMABHAI PATEL - Respondent(s)

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Appearance :
MR.SUBHASH G BAROT for Petitioner(s) : 1,
SERVED BY AFFIX.-(R) for Respondent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE K.A.PUJ

Date : 27/12/2006

ORAL JUDGMENT

1. The petitioner – original defendant has filed this petition under Article-227 of the

Constitution of India, praying for quashing and setting aside the order passed by the learned Civil Judge (S.D.) at Anand, in Execution Application No.73 of 2003 on 15.4.2005, whereby he has ordered to proceed further for execution of interim order passed in HMP No.185 of 1999 on Ex.10 application filed by the respondent – wife for interim alimony.

2. It is the case of the petitioner – husband that the marriage of the petitioner with respondent took place on 10.2.1992. Disputes between the petitioner and the respondent started due to financial difference between the two families. The respondent – wife filed HMP No.185 of 1999 before the Civil Judge (S.D.) at Nadiyad, under Section-13 of the Hindu Marriage Act for getting divorce from the petitioner. The respondent – wife has also made an application on 10.7.2001 under Section-24 for

interim alimony. The learned Judge vide his order dated 28.9.2001 below an application Ex.10 passed order to make payment of Rs.2,000/- p.m to the respondent- wife. The petitioner preferred Civil Revision Application No.1350 of 2001 before this Court on 27.12.2001. This Court has modified the said order and directed the petitioner to make the payment of Rs.1,000/- p.m to the respondent – wife. The petitioner was also directed to make the payment of Rs.6,000/- which was in arrears at that time. The petitioner has made payment of Rs.6,000/- on 31.1.2002, the receipt of which is produced at page-38 of the petition. The petitioner has already made payment of Rs.2,000/- on 5.11.2001, the receipt of which is produced at page-37 of the petition. Subsequent to this, HMP No.185 of 1999 was withdrawn by the respondent – wife. Though the amount of Rs.8,000/- was already paid by the petitioner to the respondent, the respondent has filed

Execution Petition No.73/ 2003 before the learned Civil Judge (S.D.) Anand. The petitioner has filed reply on 23.9.2003 and written arguments on 20.12.2003. Without considering this reply to the petition as well as written arguments, the learned Judge has passed an order on 15.4.2005 to proceed further with the Execution Petition.

3. It is also the say of the petitioner that to pressurize the petitioner for settlement with the respondent – wife, the respondent has filed Criminal Complaint against the petitioner which was registered as Criminal Case No.621 of 2000. The respondent – wife has, thereafter, filed HMP No.35 of 2002 before the Civil Judge (S.D.) Anand under Section-13 of the Hindu Marriage Act, which came to be allowed, against which the petitioner preferred Civil Appeal No.167 of 2002 before the District Judge, Nadiyad. The settlement was arrived at between the parties

and the petitioner agreed to accept the judgment of dissolution of marriage, against which the respondent agreed to withdraw all proceedings before any Court of law. The judgment declaring dissolution of marriage became final. The respondent gave statement in Criminal Case No.621 of 2000 that she did not want to proceed further. It is also the say of the petitioner that the respondent did not comply with the settlement and continued Execution Application No.73 of 2003, before the Civil Judge (S.D.) Anand in which the impugned order was passed. The respondent – wife also filed Criminal Misc. Application No.68 of 2002 under Section-127 of Criminal Procedure Code for enhancement of maintenance of Rs.500/- granted in Application under Section-125 of the Criminal Procedure Code. In the above background of the matter, the present petition is filed.

4. After filing of this petition, the

petitioner has filed further affidavit in support of contention raised in the petition. After considering the said affidavit, this Court has issued notice on 13.5.2005 and ad-interim relief was granted in terms of para-9(C) of the petition. This Court has passed further order on 16.9.2005 observing that though served the respondent – wife has not opted to appear. Hence, the Court has issued rule and confirmed the ad-interim- relief granted earlier. The Court has also clarified that on service of rule, if respondent wife opts not to appear before the Court on the returnable date, the Court shall pass appropriate further final order on that day. Bida was also given to the learned advocate appearing for the petitioner so that the same can be handed over to the concerned Court for service of rule to the respondent – wife. From the bailiff's report it appears that the respondent – wife was not available at the address given and hence it was affixed

at the address given by the petitioner. The rule was, therefore, served to the respondent – wife through affixation. Despite this service respondent – wife did not appear in the matter.

5. In the above background of the case, the Court heard Mr.Subhash G. Barot, learned advocate appearing for the petitioner. Nobody appears on behalf of the respondent- wife. The Court is concerned with the order passed by the learned Civil Judge (S.D.) in Execution Petition No.73 of 2003 on 15.4.2004. Mr.Barot demonstrated on the basis of documents produce on record that the said execution proceedings are fraud in respect of order passed for interim alimony in HMP No.185 of 1999. It has come on record that after September, 2001, Civil Revision Application was preferred and amount of interim alimony granted earlier was reduced to Rs.1,000/- from Rs.2,000/- in execution

petition. Execution Petition for recovery of amount of alimony was preferred on 14.2.2003 by the respondent – wife, wherein she has not disclosed that the amount of maintenance has been reduced from Rs.2,000/- to Rs.1,000/-. In this view of the matter, the Court is of the view that so far as Execution Petition No.73 of 2003 is concerned, which arises out of the HMP No.185 of 1999, no dispute remains by now as ultimately, HMP No.185 of 1999 is already withdrawn. The Court is, therefore, of the view that nothing survives so far as the said Execution Petition is concerned. The impugned order passed by the learned Civil Judge on 15.4.2005 is hereby quashed and set aside.

6. It is made clear that the Court is not concerned with the subsequent proceedings filed by the respondent – wife and this order would not come in the way of the respondent if she wants to pursue those proceedings.

7. Subject to the aforesaid observations and directions this petition is accordingly allowed. Rule is made absolute without any order as to costs.

(K. A. PUJ, J.)

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